

# Hastings Journal of Crime and Punishment

---

Volume 2  
Number 2 *Summer 2021*

Article 5

---

Summer 2021

## Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California's Need to Regulate It.

Richard Lee

Follow this and additional works at: [https://repository.uchastings.edu/hastings\\_journal\\_crime\\_punishment](https://repository.uchastings.edu/hastings_journal_crime_punishment)



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

---

### Recommended Citation

Richard Lee, *Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California's Need to Regulate It.*, 2 Hastings J. Crime & Punish. 122 (2021).

Available at: [https://repository.uchastings.edu/hastings\\_journal\\_crime\\_punishment/vol2/iss2/5](https://repository.uchastings.edu/hastings_journal_crime_punishment/vol2/iss2/5)

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Journal of Crime and Punishment by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

---

---

## **Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California's Need to Regulate It.**

RICHARD LEE

### **Abstract**

*California's state prison system lacks sufficient regulations to restrict the use of solitary confinement for pregnant women. Under the current system, the California Department of Corrections and Rehabilitations (CDCR) possesses broad discretion regarding the use of solitary confinement, administrative segregated housing, or other forms of isolated placement. According to the CDCR manual, prison officers may place a pregnant woman in solitary confinement as long as her medical condition does not "preclude" that placement. This standard, which vests an inappropriate amount of discretion in prison officers, is deeply insufficient to prevent the negative consequences of subjecting pregnant women to solitary confinement. Studies have shown that even for the general population, solitary confinement greatly increases the risk of long-term mental harm, leading to self-mutilation and suicide in some cases. Vulnerable populations like pregnant women are far more susceptible to the potential dangers of solitary confinement. To add insult to injury, California's heavy overuse of solitary confinement unquestionably exacerbates racial and class disparities. Due to the disproportionate use of solitary confinement on people of color, who are already overrepresented in prisons, the continued practice of using solitary confinement reflects the rippling effects of mass incarceration on low-income communities of color.*

*Solitary confinement is an outdated, inefficient, overpriced, and torturous form of punishment that should be banned for all people. In the cases of vulnerable populations like pregnant women, however, there must be an increased urgency to prevent further subjugation of inmates to this form of confinement. Many other jurisdictions in the U.S. have already recognized the diminishing returns of solitary confinement and have made legislative attempts to minimize those harms. Furthermore, an increasing number of states are becoming more cooperative and transparent by collecting and sharing data of pregnant women in their prisons. California should match these efforts so reproductive health allies and stakeholders can quantify how many pregnant women are imprisoned and can allocate their resources accordingly.*

*The current state prison system that allows for the solitary confinement of pregnant inmates should be viewed as unacceptable after considering the overwhelming research conducted by advocates against its use. California should follow the footsteps of other jurisdictions that have adopted alternative methods to maintain safety such as utilizing incentive-based methods to encourage positive behavior. Additionally, other facilities have also found success through providing alternative spaces that are separate from the general population but do not involve*

*single-cell confinement. This note's purpose is to emphasize the crucial need for California to finally implement regulation that can protect their prison population from this counterproductive practice. In particular, vulnerable populations like pregnant women lack the physical and mental capabilities to resist the harmful effects of solitary confinement as strongly as other able-bodied populations. While California should strive to prohibit or heavily restrict the use of solitary confinement for all populations, pregnant women are inherently more vulnerable and therefore must be prioritized.*

## I. Introduction

California, like many other states, fails to protect pregnant women from solitary confinement.<sup>1</sup> Solitary confinement, used interchangeably with the terms administrative segregation and segregated housing, will commonly mean the single-cell confinement of a prisoner, excluding them from any activities involving interaction with other prisoners such as dining and recreation time.<sup>2</sup> Often, prisons will keep individuals in solitary confinement for 23 hours a day and only permit an hour or two to tend to basic activities such as showering and exercise.<sup>3</sup> Under the current rules of California's state prison system, the determination of someone's placement in solitary confinement falls into the California Department of Corrections and Rehabilitation (CDCR)'s hands.<sup>4</sup> 15 California Code of Regulations (CCR) § 3335 grants CDCR staff the discretion to make administrative segregation placements in situations where an officer subjectively determines that such placement would be in the interest of the prisoner's or others' safety.<sup>5</sup> Granted, it is possible for a subjective determination standard to produce fair results that prioritizes women's

---

<sup>1</sup> *Still Worse Than Second-Class: Solitary Confinement of Women in the United States*, AMERICAN CIVIL LIBERTIES UNION (2019), [https://www.aclu.org/sites/default/files/field\\_document/062419-sj-solitaryreportcover.pdf](https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf).

<sup>2</sup> Philip Bulman et al., *Study Raises Questions About Psychological Effects of Solitary Confinement*, NAT'L INST. OF JUSTICE (Mar. 25, 2012), <https://www.ojp.gov/pdffiles1/nij/237720.pdf>; see Cal. Code Regs. tit. 15, § 3335.

<sup>3</sup> Bulman et al., *supra* note 2.

<sup>4</sup> 15 CCR § 3335, *supra* note 2.

<sup>5</sup> *Id.*

health. However, these determinations are dependent on the opinions and whims of individual CDCR staff members. Under the current CDCR policy, this subjective determination is insufficient to systematically guarantee the protection of all pregnant women from wrongful placement into solitary confinement.

Moreover, the code grants several options for a prison official to justify using solitary confinement for reasons outside of standard safety concerns.<sup>6</sup> 15 CCR § 3335(a) allows the CDCR to use Non-Disciplinary Segregation for reasons such as if the prisoner is involved in a non-criminal investigation, is related to a prison staff member, or is a victim of sexual assault.<sup>7</sup> But, the CDCR is not limited to those listed justifications.<sup>8</sup> While this does not necessarily mean the individual CDCR facility will impose unfair and unjust standards, these decisions are made without the input of voices in community stakeholder voices. In other words, potential advocates interested in representing the interests and concerns of pregnant women likely will not be included in the decision-making process.

As a result, the CDCR employs vague and subjective standards that ultimately give its officials too much discretion in determining placements into solitary confinement.<sup>9</sup> Under rule 52080.24 of the CDCR's operations manual, immediate placement into administrative segregated housing is necessary when an inmate's presence "presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct, criminal activity, or the safety of any person."<sup>10</sup> There are no other provisions that clarify exactly what vague terms used therein such as "immediate threat," "institution

---

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* 15 CCR § 3335(a)(1) gives CDCR staff the authority to place an inmate in administrative segregation "for administrative reasons to include but not limited to" the justifications listed above.

<sup>9</sup> CAL. DEP'T. OF CORR. AND REHAB., OPERATIONS MANUAL 406 (2020), <https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/03/2020-DOM-02.27.20.pdf?label=View%20the%20CDCR%202020%20Department%20Operations%20Manual&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/dom-toc/>.

<sup>10</sup> *Id.*

security,” and “jeopardizes the integrity” mean.<sup>11</sup> Rule 54040.6 states inmates that are at high risk for sexual victimization may also be placed in administrative segregated housing, but only after “a determination has been made that there is no alternative means of separation from likely abusers.”<sup>12</sup> Again, CDCR officials are permitted—empowered, even—to make a subjective determination about a person’s fate. While there may be some prison officers who will make well-informed decisions to prioritize a pregnant woman’s health, it is inappropriate for these decisions to be made by any prison officer without public participation in a formal political forum.

Consequently, the California state prison system’s current regulations leave open the possibility for solitary confinement to be overused and abused. Even in cases where an inmate finds themselves involved in a minor situation or a potential technical infraction, an officer can subjectively view these situations as sufficient to meet the standards of rules like 52080.24 and 54040.6. The lack of regulation on the CDCR becomes even more concerning when considering a population as vulnerable as pregnant women. Under rule 54045.11, state prison officers can place a pregnant woman into administrative segregation placement as long as her “medical condition does not preclude housing.”<sup>13</sup> As with the prior CDCR manual rules, there is broad discretion and, in most cases, the medical condition clause can be easily bypassed since solitary confinement is not an activity that will cause physical harm on its face.

While recent studies have documented the harmful psychological effects of solitary confinement for all people such as suicide and self-harm,<sup>14</sup> these effects are exacerbated for vulnerable

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 462.

<sup>13</sup> *Id.* at 470.

<sup>14</sup> New York Ass’n of Psychiatric Rehab. Services, Inc., *New Report Shows High Link Between Suicide and Solitary Confinement, Advocates Demand that Governor Cuomo, State Legislators Act Now!*, (May 26, 2020), <https://www.nyaprs.org/e-news-bulletins/2020/5/26/new-report-shows-high-link-between-suicide-and-solitary-confinement-advocates-demand-that-governor-cuomo-state-legislators-act-now>; ACLU & Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (Oct. 2012), [https://www.aclu.org/sites/default/files/field\\_document/us1012webwcover.pdf](https://www.aclu.org/sites/default/files/field_document/us1012webwcover.pdf); Bri e A.\_Williams, *Older Prisoners and the Physical Health Effects of Solitary*

populations like pregnant women. In fact, most of the world has recognized that the use of solitary confinement is inappropriate: the United Nations' Nelson Mandela Law outlaws the practice for children and women altogether.<sup>15</sup> Furthermore, the U.S. has recently taken strides by acknowledging that the country's historical use of solitary confinement does not quite fit with the criminal justice system's goal of rehabilitation.<sup>16</sup> The Solitary Confinement Reform Act bill in 2019, although did not become law,<sup>17</sup> pushed to establish limits on solitary confinement in its length, usage, and conditions for federal prisons.<sup>18</sup>

Although California has historically engaged in little legislative action to protect prisoners from solitary confinement, Senate Bill 124 in 2015 marked one of the first laws to tackle this issue.<sup>19</sup> Consistent with the Nelson Mandela Law, California's SB 124 prioritized the health concerns of juveniles and placed severe restrictions on the use of segregated housing for youth in both state and local facilities.<sup>20</sup> Although the bill did not completely prohibit solitary confinement, it heavily limits prison officials' discretion. For children with mental health disorders, solitary confinement is banned without exception.<sup>21</sup> In the rare occasions where a juvenile must be placed in solitary confinement, it cannot exceed four hours and must not compromise a child's physical or mental health.<sup>22</sup> The next step for California is to expand and build off of SB 124 by extending the regulation of solitary confinement to another vulnerable population: pregnant women.

Because the California legislature has essentially delegated the authority to regulate state prisons to the CDCR, the latter operates

---

*Confinement*, 106(12) AM. J. PUBLIC HEALTH 2126, 2126-27 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5105008>.

<sup>15</sup> UNITED NATIONS, STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS 14 (2015), [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).

<sup>16</sup> S. 719, 116th Cong. (2019).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> S. B. 124, 2014-2015 Reg. Sess., (Cal. 2015).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

under its own discretion and officers face few restrictions if they choose to place a pregnant woman in an administrative segregation unit. While the CDCR may claim that there are a variety of reasons to maintain this practice and discretion, it ultimately opens up the risk for pregnant women to be subjected to undue harm. As this note will show, solitary confinement is an ineffective and outdated practice that yields diminishing returns for societal safety. The risks and consequences of solitary confinement are further heightened for vulnerable populations. While a reimagined criminal justice system would strive to completely eliminate this practice, California should at the very least place restrictions on its use for pregnant women. Under the current system, there is no protection. To add insult to injury, there is also a lack of rules that require this problem to be even documented and reported for purposes of data. Consequently, stakeholders such as California Coalition for Women Prisoners and the National Council for Incarcerated and Formerly Incarcerated Women and Girls are incapable of even understanding the magnitude of the issue.<sup>23</sup>

To update and improve its criminal justice system to combat the harms of mass incarceration and move towards a system that effectuates rehabilitation rather than simply retribution, it would be in California's best interest to prioritize and protect pregnant women on two fronts. First, the CDCR should increase transparency and provide data on members of its female population that were in the prenatal stage at any point during their incarceration. Second, California should follow the footsteps of states like Georgia, Montana, and nearly every other country in the United Nations and either ban or heavily restrict the use of solitary confinement for pregnant women.<sup>24</sup>

The first section of this note analyzes the current situation in California's state prison system and attempts to quantify the current problem. Although there is a lack of available information to determine the true extent of the pregnant prison population in California, the existing data of the general population can help provide

---

<sup>23</sup> Jennifer Bronson & Carolyn Sufrin, *Pregnant Women in Prison and Jail Don't Count: Data Gaps on Maternal Health and Incarceration*, 134 PUB. HEALTH REP. 57S (2019).

<sup>24</sup> AMERICAN CIVIL LIBERTIES UNION, *supra* note 1.

---

---

estimates. Moreover, this section encourages prisons to provide accurate, publicly available data of its pregnant population.

The second section of this note concentrates on the vulnerability of pregnant women in prison. Incarcerated pregnant women are an especially vulnerable group and can be severely harmed both physically and mentally if they are not expressly protected. This section shows how solitary confinement exacerbates these challenges and poses a significant threat to the health and well-being of an incarcerated pregnant woman. Ultimately, the health considerations that should be accounted for regarding pregnant women lead to the conclusion that solitary confinement is unacceptable and inhumane.

The third section further extends the scope of the problem as it contends that solitary confinement of pregnant women disproportionately affects the most marginalized groups. While all pregnant women will suffer the drawbacks of solitary confinement, this practice has and will continue to exacerbate the already existing racial and socioeconomic disparities of the prison population unless reform attempts are made.

The fourth section of this note focuses on demands that have been made to limit solitary confinement for other vulnerable prison populations, such as youth, the elderly, and the mentally ill. A comparison of pregnant women and these other vulnerable groups highlights the common traits these groups share and how it is imperative that all of these groups are shielded from broad discretionary use of solitary confinement.

In the fifth section, this note will look at other jurisdictions that have banned or severely limited solitary confinement. By looking at success stories of other jurisdictions that have implemented efforts to reduce the use of solitary confinement, California should consider applying a similar method to protect its incarcerated pregnant population.

Lastly, the final section acknowledges some of the concerns that may arise should California take action in limiting the use of solitary confinement. These concerns include prisoner safety, feasibility, and future implications for policymaking.

It is worth noting that there are over one hundred California county jails, distinct from one another in terms of population and use of solitary confinement. Due to the difficulties of accessing population



data for every California county jail, the data used here largely focuses on the CDCR and California's state prison system. Furthermore, the core issue this research seeks to address is the lack of regulation that can limit the broad and overarching discretion the CDCR currently holds. However, there are several counties such as Contra Costa and Santa Clara that, although they have not specifically addressed protections for pregnant inmates, have recently taken much more active efforts in limiting their use of solitary confinement.<sup>25</sup> The different approaches that these counties have adopted should serve as potential models for California to consider. While this note primarily focuses on the state prison system and the need for California to regulate the CDCR, California's ultimate goal should be to enact regulations restricting solitary confinement in not only state prisons, but in all county facilities as well.

## **II. Analyzing and quantifying California's current situation**

When California passed Assembly Bill 732 in the fall of 2020, it marked a historical victory for advocates of prisoners' rights.<sup>26</sup> Under AB 732, any incarcerated person who is pregnant in state or county correctional facilities will be guaranteed medical access to meet the needs of their condition.<sup>27</sup> Prisons are expected to provide a pregnant inmate routine prenatal appointments with medical professionals and must transport them to a hospital for the purposes of childbirth.<sup>28</sup> Furthermore, the bill prevents a prison from implementing the use of tasers and pepper sprays on pregnant individuals.<sup>29</sup>

---

<sup>25</sup> Dan Thompson, *California Jails Use Kinder Approach To Solitary Confinement*, KPBS (Dec. 26, 2019), <https://www.kpbs.org/news/2019/dec/26/california-jails-kinder-approach-solitary-confinem/>.

<sup>26</sup> A.B. 732, 2020-2021 Reg. Sess. (Cal. 2020).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

For California prisoner rights advocates, AB 732 serves as a major progressive step as one of the first bills in the state's history to provide a comprehensive plan that ensures the medical rights of pregnant women in prison.<sup>30</sup> However, an earlier version of AB 732 would have also tackled another issue that has largely been left untouched: solitary confinement. Those early versions of Assembly Member Rob Bonta's bill prohibited the use of solitary confinement for pregnant inmates.<sup>31</sup> In fact, the January 23, 2020 amendments broadened the coverage of the bill to include incarcerated inmates who are "pregnant, or has given birth, had a miscarriage, or recently terminated a pregnancy within 12 weeks" to not be subjected to "solitary confinement, administrative segregation, or any similar practice."<sup>32</sup> By adding "any similar practice," this language attempted to prevent the CDCR to elude its effects by terming solitary confinement as "administrative segregation." The final version preserved almost every other part of the bill.<sup>33</sup>

According to the California Department of Corrections and Rehabilitation, there were 3,491 women in the California state prison system as of September 30, 2020.<sup>34</sup> Although the CDCR provides monthly population reports, they are general counts with severely

---

<sup>30</sup> S. Comm. On Appropriations, 2019-2020 Reg. Sess., B. Analysis: A.B. 732, [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200AB732](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB732).

<sup>31</sup> *Id.* It is important to note that there were concerns that banning solitary confinement for only one group, pregnant women, would implicitly validate the use of solitary confinement for all other groups. This was why the language about solitary confinement was not included in the final version of the bill. Video Interview with Maheem Ahmed, Alma Musvosvi, Graham Drake, Staff Members, Assemblyman Rob Bonta's Office (Oct. 7, 2020).

<sup>32</sup> A.B. 732 (Mar. 21, 2019), 2018-2019 Reg. Sess. (Cal. 2019), [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=201920200AB732&cversion=20190AB73298AMD](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201920200AB732&cversion=20190AB73298AMD); A.B. 732 (Jan. 23, 2020), 2020-2021 Reg. Sess. (Cal. 2020), [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=201920200AB732&cversion=20190AB73297AMD](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201920200AB732&cversion=20190AB73297AMD).

<sup>33</sup> A.B. 732, *supra* note 26.

<sup>34</sup> CAL. DEP'T. OF CORR. AND REHAB., MONTHLY REPORT OF POPULATION AS OF MIDNIGHT 1 (Sept. 30, 2020), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/10/Tpop1d2009.pdf>.

limited categories and information.<sup>35</sup> The CDCR's most detailed versions, which provide specific offender demographics, are only included in the 24-month period reports.<sup>36</sup> While these 24-month reports are typically published every six months, there has not been an updated report in 1.5 years from the time this note was written in November, 2020.<sup>37</sup> As a result, the data that this note uses is derived from the CDCR's latest report from June 2019, when the female population was 5,691.<sup>38</sup> It is important to acknowledge that as of late 2020, the current female population size since June 2019 has significantly decreased by over 2,000 inmates.<sup>39</sup> As the COVID-19 pandemic persists past 2020, that downward trend is likely to continue.

In the state prison system, the most recent report states there was a population total of at least 127 women that were placed in administrative segregation as of June 30, 2019 (Folsom Women's Facility, one of the three women's facilities in the state prison system, did not provide data pertaining to solitary confinement).<sup>40</sup> State prison systems like California's historically have not recorded or reported the number of pregnant women in prison.<sup>41</sup> Thus, it is difficult to quantify the precise extent of how many pregnant women are subjected to solitary confinement. The June 2019 report did, however, provide data of the female population's age breakdown.<sup>42</sup> During that time, 73.3%

---

<sup>35</sup> *Id.*

<sup>36</sup> *Offender Data Points*, CAL. DEP'T. OF CORR. AND REHAB., <https://www.cdcr.ca.gov/research/offender-outcomes-characteristics/offender-data-points/>.

<sup>37</sup> *Id.*

<sup>38</sup> CAL. DEP'T. OF CORR. AND REHAB., OFFENDER DATA POINTS: OFFENDER DEMOGRAPHICS FOR THE 24-MONTH PERIOD ENDING JUNE 2019, 28, <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/10/201906-DataPoints.pdf>.

<sup>39</sup> CAL. DEP'T. OF CORR. AND REHAB., *supra* note 38, at 28; CAL. DEP'T. OF CORR. AND REHAB., MONTHLY REPORT OF POPULATION AS OF MIDNIGHT 1 (Aug. 30, 2020), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/09/Tpop1d2008.pdf>.

<sup>40</sup> CAL. DEP'T. OF CORR. AND REHAB., *supra* note 38 at 8.

<sup>41</sup> *First of its Kind Statistics on Pregnant Women in U.S. Prisons*, JOHNS HOPKINS MEDICINE (Mar. 21, 2019), <https://www.hopkinsmedicine.org/news/newsroom/news-releases/first-of-its-kind-statistics-on-pregnant-women-in-us-prisons>.

<sup>42</sup> CAL. DEP'T. OF CORR. AND REHAB., *supra* note 38 at 34.

of the female population fell between the ages of 18-44.<sup>43</sup> Considering that ages 12-51 are an average woman's reproductive years with the greatest likelihood for pregnancy being between 20 and 35 years old, the majority of women in state prison are in the windows where they are most likely to be pregnant.<sup>44</sup>

Although the CDCR's current population size has reduced since June 2019, the age demographics will likely still reflect a similar percentage to the current population size.<sup>45</sup> Furthermore, since 127 women out of 5,691 were placed in administrative segregation units in June 2019, that equates to 2.2% of the general female population who were held in solitary confinement. Accordingly, that would mean approximately 77 women currently in state prisons have been placed in solitary confinement since June 2019.<sup>46</sup>

Ultimately, the data gathering has fallen short because state prison systems do not provide data on pregnant inmates. As a result, there is not enough data to make certain quantitative conclusions of how many pregnant women have undergone solitary confinement. Nevertheless, the difficulty in acquiring data does not change the fact that California currently lacks a comprehensive plan that can protect pregnant women in prison from solitary confinement.

### **III. The physical and mental vulnerability of pregnant women in solitary confinement**

While AB 732 made tremendous strides in ensuring that incarcerated women are guaranteed access to appropriate medical care, the bill will not prevent the potential harmful effects of solitary confinement on pregnant women. Pregnant women will often undergo

---

<sup>43</sup> *Id.*

<sup>44</sup> Holly Eagleson, *Your Chances of Getting Pregnant at Every Age*, PARENTS (Aug. 1, 2013), <https://www.parents.com/getting-pregnant/trying-to-conceive/up-your-chances-of-getting-pregnant-at-every-age/>; Stephanie Watson, *When Can You Get Pregnant and What's the Best Age to Have a Baby?*, HEALTHLINE (June 6, 2018), <https://www.healthline.com/health/womens-health/childbearing-age#age-and-fertility>.

<sup>45</sup> 73.3% of 3,491 total women in California state prisons calculates to 2,559.

<sup>46</sup> 2.2% of 3,491 women calculates to 77.

psychological and emotional changes during their pregnancy.<sup>47</sup> Although psychological vulnerability is to be expected, “new stress or trauma” will significantly exacerbate a pregnant woman’s mental condition.<sup>48</sup> Consequently, the trauma will either cause pregnant women in solitary confinement to experience PTSD symptoms or worsen the existing PTSD symptoms that they are already having, which ultimately correlates with an increased risk for post-birth complications.<sup>49</sup>

For many women, simply being pregnant by itself may already expose them to these mental health risks.<sup>50</sup> To be pregnant while in a prison environment adds another layer of traumatic experiences that further increases that risk. Research has shown that incarcerated women in general have higher rates of mental health diagnoses, as they are four to ten times more likely to suffer from PTSD than women who are not in prison.<sup>51</sup> Estimates suggest that as many as 60% of the country’s entire female prison population require mental health services to address underlying traumas such as drug abuse, alcohol dependence, and past physical and emotional abuse.<sup>52</sup>

---

<sup>47</sup> *Recognizing the vulnerability of pregnancy*, UNIV. OF S.F. BLOGS: THE PARENTLINE (Aug. 4, 2016), <https://usfblogs.usfca.edu/parentline/2016/08/04/we-can-work-it-out-the-vulnerability-of-pregnancy/>.

<sup>48</sup> Kara Gavin, *Pregnancy and PTSD: Surprising findings could help moms-to-be at risk*, UNIV. OF MICH. MED. (Feb. 10, 2016), <https://www.uofmhealth.org/news/archive/201602/pregnancy-and-ptsd-surprising-findings-could-help-moms-be#:~:text=Past%20PTSD%20doesn't%20mean%20problems%20in%20pregnancy&text=But%20for%20some%2C%20PTSD%20got,%2C%20and%20post%2Dbirth%20problems.>

<sup>49</sup> *Id.*

<sup>50</sup> THE PARENTLINE, *supra* note 47.

<sup>51</sup> Andrea Knittel & Carolyn Sufrin, *Maternal Health Equity and Justice for Pregnant Women Who Experience Incarceration*, JAMA NETWORK OPEN: INVITED COMMENTARY | OBSTETRICS AND GYNECOLOGY (Aug. 6, 2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2769101>; Green et al., *Trauma Experiences and Mental Health Among Incarcerated Women*, 8 PSYCH. TRAUMA: THEORY, RSCH., PRAC., AND POL’Y 455, 456 n.4 (2016), <https://psycnet-apa-org.uchastings.idm.oclc.org/fulltext/2016-17457-001.pdf>.

<sup>52</sup> *Problems and unmet needs in the Contemporary Women’s Prison*, *Prisons: Prisons for Women*, AM. L. AND LEGAL INFO.: LAW LIBR.,

Psychological research has documented that solitary confinement puts individuals “at grave risk of psychological harm” and many emerge out of solitary confinement having experienced panic attacks, depression, paranoia, hallucinations, and a higher risk of self-harm and suicide.<sup>53</sup> Both pregnancy and incarceration will each inherently increase a woman’s anxiety and risk of experiencing the above symptoms. When all the risk factors of pregnant prisoners intersect, it puts them in an especially ill-equipped position to protect themselves mentally against the potential harms of solitary confinement.

Moreover, the safeguards offered by AB 732 may not be sufficient to maintain the physical health of pregnant women. Although the bill’s assurances of medical care promote women’s health, they do not function as a shield against the mental health effects that solitary confinement produces or exacerbates. For instance, the frequency of developing blood clots in particular is much greater for pregnant women in restrictive housing.<sup>54</sup> Because the growing baby presses onto a woman’s pelvis area, her condition decreases the blood flow to the legs.<sup>55</sup> If a woman does not have adequate space for exercise in a segregated unit, the likelihood of suffering from blood clots is much greater.<sup>56</sup>

In many cases, pregnant individuals require urgent attention. Although AB 732 guarantees medical access and the CDCR manual states that “the offender shall continue to receive prenatal medical care and treatment,” solitary confinement can be an obstacle that delays the process.<sup>57</sup> It is not uncommon for a woman in the prenatal phase to experience a variety of complications that require timely medical

---

<https://law.jrank.org/pages/1805/Prisons-Prisons-Women-Problems-unmet-needs-in-contemporary-women-s-prison.html>.

<sup>53</sup> Sadie Dingfelder, AM. PSYCH. ASS’N, *Psychologist testifies on the risks of solitary confinement*, 43 MONITOR ON PSYCH. 10 n.9 (2012), <https://www.apa.org/monitor/2012/10/solitary>; ACLU, *supra* note 1.

<sup>54</sup> *Pregnant? Don’t Overlook Blood Clots*, VTE Home, Articles & Key Findings, CTR. FOR DISEASE CONTROL AND PREVENTION (Feb. 7, 2021), <https://www.cdc.gov/ncbddd/dvt/features/blood-clots-pregnant-women.html>.

<sup>55</sup> *Id.*

<sup>56</sup> Telephone interview with Carolyn Sufrin, Professor of Gynecology and Obstetrics, Johns Hopkins Sch. of Med. (Nov. 11, 2020).

<sup>57</sup> CAL. DEP’T OF CORR. AND REHAB., *supra* note 9 at 470.

attention such as vaginal bleeding, contractions, pain, preeclampsia, limited movement of the baby, and blood clots. Even a delay of 30 minutes can be detrimental.

When a pregnant woman is isolated, the crucial time it will take for her to obtain an officer's attention, transfer her from her segregated unit, and finally to a healthcare official, opens up the problematic possibility that the medical attention will arrive too late—before irreparable damage to the woman and her baby may occur. It is worth noting that the risk of delayed attention could be slightly alleviated if the woman is under constant supervision and can be tended to immediately. But the CDCR manual states the only situations where constant supervision of an isolated prisoner is required is under the Contraband Surveillance Watch policy, which only applies to prisoners who refuse to surrender concealed contraband items to their officers.<sup>58</sup> Situations of Contraband Surveillance Watch are highly specific and pregnant women are unlikely to benefit from a rule that is so narrowly tailored. Because that language of constant supervision does not reappear in rule 54045.11 for pregnant women who are placed in an administrative segregation unit, there is no requirement for prison staff to constantly supervise pregnant women in solitary confinement.<sup>59</sup> Consequently, there is a potential increased risk for delayed medical attention in situations where an emergency may arise.

#### **IV. Confining pregnant women to solitary confinement will likely exacerbate racial and socioeconomic disparities**

As explained above, there are three different factors that each individually subject a woman in these circumstances to psychological harm: incarceration, pregnancy, and solitary confinement. But when considering the communities that disproportionately make up the female prison population due to the rippling effects of mass incarceration, there is a latent fourth consideration that further

---

<sup>58</sup> *Id.* at 389-390.

<sup>59</sup> *Id.* at 470.

increases a woman's risk to psychological harm and potential pregnancy complications.<sup>60</sup>

As previously mentioned, mental health concerns are heightened when a pregnant woman experiences a new stressful or traumatic event.<sup>61</sup> And for women that enter pregnancy having pre-existing PTSD symptoms, the new stressful and traumatic events will likely exacerbate and worsen those pre-existing conditions.<sup>62</sup>

Like the majority of states in the U.S., California's female prison population is overwhelmingly overrepresented by people from already disadvantaged communities.<sup>63</sup> In the era of mass incarceration since 1977, America has seen an exponential 832% increase of women behind bars.<sup>64</sup> As a consequence of the War on Drugs, Black people and people of color, particularly from the poorest neighborhoods, have ultimately felt the brunt of the law enforcement changes that have occurred in the past 50 years.<sup>65</sup> It has been well-documented and criticized that America, through its policy actions, has essentially criminalized poverty through its over-policing of under-resourced communities.<sup>66</sup> As a result of the effects of mass incarceration that have plagued so many communities, the country's prison population disproportionately overrepresents low-income people of color.

Research has shown that incarcerated women from inner-city impoverished communities are more likely to have higher rates of chronic illnesses, mental health diagnoses, and substance use disorders.<sup>67</sup> Consequently, members from these marginalized groups

---

<sup>60</sup> CAROLYN SUFRIN, *JAILCARE: FINDING THE SAFETY NET FOR WOMEN BEHIND BARS* 1, 9 (1st ed. 2017); Ali Waters, *Alone in isolation: A clinician's guide to women in solitary confinement*, 28 CRIM. BEHAV. AND MENTAL HEALTH 217, 217 n.3 (2018).

<sup>61</sup> Gavin, *supra* note 48.

<sup>62</sup> *Id.*

<sup>63</sup> Sufrin, *supra* note 60 at 9.

<sup>64</sup> *Id.*

<sup>65</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (10th Anniversary ed. 2020).

<sup>66</sup> *Poverty and Debt, Issues*, PRISON POL'Y INITIATIVE, [https://www.prisonpolicy.org/poverty.html?gclid=CjwKCAiAqJn9BRB0EiwAJ1SztW8psspFia-wd\\_6u7PJSQ7V7rXqGmTj4MYZiUVqg2ccxlQb7a-ZApxoC7koQAvD\\_BwE](https://www.prisonpolicy.org/poverty.html?gclid=CjwKCAiAqJn9BRB0EiwAJ1SztW8psspFia-wd_6u7PJSQ7V7rXqGmTj4MYZiUVqg2ccxlQb7a-ZApxoC7koQAvD_BwE).

<sup>67</sup> Knittel & Sufrin, *supra* note 51.



enter prison already dealing with a variety of conditions at risk of being exacerbated by the incarceration experience. Gynecologist researchers Andrea Knittel and Carolyn Sufrin argue that these higher rates of health disparities among incarcerated women are a result of the intersection of a variety of social obstacles that these women face such as poverty, homelessness, and systematic racism.<sup>68</sup> According to the CDCR's June 2019 report, 68.2% of the female state prison population identify as women of color with 25.7% identifying as Black.<sup>69</sup> Moreover, studies have shown that women of color, particularly American Indigenous, Black, and Latinx women are significantly more likely to be placed in solitary confinement than their white counterparts.<sup>70</sup> In a 2016 report that contained data from 38 states, the federal system, and the Virgin Islands, a fourth of the female prison population were Black women.<sup>71</sup> However, Black women represented over 40% of female prisoners who were placed in solitary confinement.<sup>72</sup>

When the racial and social demographics of incarcerated women in California are factored in, there is a high risk of afflicting further mental harm to an already vulnerable population. In a prison population pool that disproportionately consists of individuals from trauma-inflicted groups made up of intersections of gender, class, and race, the majority of all incarcerated pregnant women will carry some form of mental trauma. Solitary confinement will likely exacerbate these traumas and in almost every scenario will produce harmful effects on a pregnant woman's health and livelihood.

**V. Evidence of the stark effects of solitary confinement on other vulnerable populations establishes the need to ban the practice in California for pregnant women**

---

<sup>68</sup> *Id.*

<sup>69</sup> CAL. DEP'T. OF CORR. AND REHAB., *supra* note 38 at 33.

<sup>70</sup> MELINDA TASCA & JILLIAN TURANOVIC, NAT'L INST. OF JUST.: W.E.B DU BOIS PROGRAM ON RACE AND CRIME 1 (2018).

<sup>71</sup> *Race & Justice News: Black Women Overrepresented in Solitary Confinement*, News, THE SENTENCING PROJECT (Dec. 16, 2016), <https://www.sentencingproject.org/news/race-justice-news-black-women-overrepresented-solitary-confinement/>.

<sup>72</sup> *Id.*

The U.S. prison system designed and implemented solitary confinement as a means of punishing inmates that belonged to the general population: able-bodied men.<sup>73</sup> Even for this population, the results have been questionable at best.<sup>74</sup> Research and data show overwhelming reports that the practice has driven prisoners insane and produced little to no rehabilitative results.<sup>75</sup> Solitary confinement was formulated with the intention of punishing misbehaving adult male prisoners, not pregnant women, youth, the elderly, and the mentally ill. While a call to completely ban solitary confinement may be too far of a step for California, the State should at least recognize that the practice is especially inappropriate for certain marginalized groups of prisoners and to make reforms as suggested herein.

Evidence of the damaging effects of solitary confinement on other vulnerable populations indicates the need to ban the practice for pregnant women. It has been proven that solitary confinement can cause severe mental harm to individuals even if they are not from marginalized communities and have no history of mental health problems.<sup>76</sup> The accumulation of traumatic experiences that incarcerated pregnant women are likely to go through makes them highly more susceptible to further harm when subjected to solitary confinement.<sup>77</sup> Similar to pregnant women, research has argued that the use of solitary confinement for youth, the elderly, and the mentally ill exposes them to severe mental health risks.<sup>78</sup> Therefore, the past efforts to restrict solitary confinement for these populations should be extended to pregnant women.

---

<sup>73</sup> SUFRIN, *supra* note 60 at 10.

<sup>74</sup> Keramet Reiter, *The Most Restrictive Alternative: A Litigation History of Solitary Confinement in U.S.*

*Prisons, 1960-2006*, 57 STUDIES IN L., POL. AND SOC'Y 69 (2012).

<sup>75</sup> *Id.*

<sup>76</sup> ACLU & HUMAN RIGHTS WATCH, *supra* note 14.

<sup>77</sup> SUFRIN, *supra* note 60.

<sup>78</sup> Williams, *supra* note 14; ACLU, *supra* note 14 at 24; Erin Corbett, *Study: Over 4,000 Prisoners w Serious Mental Illness are Held in Solitary Confinement*, N.Y. ASS'N OF PSYCH. REHAB. SERV., INC. (Oct. 10, 2018), <https://www.nyaprs.org/e-news-bulletins/2018/11/30/study-over-4-000-prisoners-w-serious-mental-illness-are-held-in-solitary-confinement>.

## Children:

Because children are still developing in their mental maturity, they will have fewer psychological resources than average adults will have to manage their stress, anxiety, and discomfort when they experience solitary confinement.<sup>79</sup> In many ways, the vulnerabilities of children are similar to pregnant women. The ACLU found that solitary confinement can exacerbate the inherent negative aspects of children's mental state who have experienced trauma, abuse, and neglect.<sup>80</sup> Like the female prison population, the juvenile prison population also highlights racial and socioeconomic disparities that result in an overrepresentation of people who have been exposed to more adverse traumatic experiences.<sup>81</sup> While these disparities are global issues among the general population, children and pregnant women must be distinguished from able-bodied men because the former groups are in a more vulnerable state and are not as conditioned to resist further traumatic experiences. Solitary confinement thus serves as a catalyst that augments a young person's trauma and further harms their mental health.

The urgency to end solitary confinement for youth drove California to make one of the first moves in the state's history to restrict the use of the practice. In response to studies showing that "young people are psychologically unable to handle solitary confinement with the resilience of an adult" and have an increased rate of self-mutilation and suicide when exposed to the practice, California passed Senate Bill 124, which limits the use of solitary confinement for juveniles.<sup>82</sup> Under this Bill, prisons may only use solitary confinement if a youth poses an immediate and substantial risk of harm and only if the youth is not suffering from a mental illness.<sup>83</sup> As there is already precedent in California of legislation that reduces the damaging consequences of solitary confinement, the next logical step

---

<sup>79</sup> ACLU & Human Rights Watch, *supra* note 14 at 24.

<sup>80</sup> *Id.*

<sup>81</sup> Roy Wade Jr. et al., *Adverse Childhood Experiences of Low-Income Urban Youth*, 134 AM. ACAD. OF PEDIATRICS 13-20 (Issue 1) 13-20 (2014); ACLU, *supra* note 14 at 13.

<sup>82</sup> S.B. 124, *supra* note 19 at 3.

<sup>83</sup> *Id.*

should be to extend this awareness to similarly vulnerable populations, such as pregnant women, expected to handle traumatic events to the same degree as able-bodied men.

### **Elderly:**

Likewise, the concerns of pregnant women should also be viewed similarly to the elderly population, where research has argued solitary confinement for this population is especially harmful.<sup>84</sup> For older prisoners, solitary confinement can increase confusion and work as a stimulant that accelerates the rate of an older prisoner's declining memory.<sup>85</sup> For those with impaired hearing, they lack the ability to even listen or establish contact with the environment outside of their solitary confinement unit, which increases their feeling of isolation.<sup>86</sup> In many cases, that feeling of isolation can subsequently worsen heart disease and hasten death.<sup>87</sup> There is also a concern that placement in solitary confinement can disturb one's visual depth perception—"the feeling that they do not know where the floor is"—which impedes their sense of balance and increases the risk of falling.<sup>88</sup>

Similarly, women going through the prenatal stage are also undergoing psychological and emotional changes like the elderly.<sup>89</sup> And of course, pregnant women are also experiencing their body changing to a reduced capacity which makes them more physically vulnerable to accidents.<sup>90</sup> Like older prisoners, pregnant women are a vulnerable population and the punishing effects of solitary confinement, which some argue already rises to the level of torture for non-marginalized people, can only serve to endanger a sensitive group even further.<sup>91</sup> Therefore, it is imperative that policy-makers and prison officials consider the vulnerability of these groups in legislation regarding solitary confinement.

---

<sup>84</sup> Williams, *supra* note 14.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> PARENTLINE, *supra* note 47.

<sup>90</sup> *Id.*

<sup>91</sup> Williams, *supra* note 14.

### The mentally ill:

Lastly, the existing concerns regarding the restriction of solitary confinement for individuals who are mentally ill also share many parallels to the concerns that exist for pregnant women. Mentally ill prisoners, similar to pregnant women, children, and older prisoners, are at greater risk than the general prison population because solitary confinement delivers a high likelihood of exacerbating their existing mental state.<sup>92</sup> The ACLU describes those with a serious mental illness as people who are psychotic, schizophrenic, or suffer from bipolar disorder.<sup>93</sup> Like incarcerated pregnant women, prisoners who suffer from a serious mental illness are not as well-suited as those from the general population to adjust to a jail environment.<sup>94</sup> Consequently, both of these groups find themselves in a more dangerous situation with a greater likelihood of suffering further mental and physical complications.<sup>95</sup> When solitary confinement is introduced into the equation for mentally ill prisoners, the results are overwhelmingly disastrous. Studies conclude that mentally ill prisoners subjected to solitary confinement are seven times more likely to harm themselves or commit suicide than those that were not subjected to the practice.<sup>96</sup>

In Virginia from 2016 to 2018, a prisoner man named Tyquine Lee, who had suffered from ADHD, schizophrenia, and a personality disorder, was placed into solitary confinement for over 600 days.<sup>97</sup>

---

<sup>92</sup> Corbett, *supra* note 78.

<sup>93</sup> *Id.*

<sup>94</sup> Craig Haney, *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities*, OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING AND EVALUATION (Dec. 1, 2001), <https://aspe.hhs.gov/basic-report/psychological-impact-incarceration-implications-post-prison-adjustment/>.

<sup>95</sup> *Id.*

<sup>96</sup> The Associated Press, *Inmates in Solitary Confinement 7 Times More Likely to Harm Themselves: Study*, CBS NEWS (Feb. 13, 2014), <https://www.cbsnews.com/news/inmates-in-solitary-confinement-7-times-more-likely-to-harm-themselves-study/>.

<sup>97</sup> Elizabeth Weil-Greenberg, *A Virginia Prison Held a Man in Solitary Confinement for Over 600 Days*, THE APPEAL (Feb. 5, 2021), <https://theappeal.org/a-virginia-prison-held-a-man-in-solitary-confinement-for-over-600-days/>; Michael Sainato,

Following two months of solitary confinement, he lost 30 pounds, forgot his own name, could no longer speak, and could not recognize his own mother.<sup>98</sup> In late 2020, Lee's mother and Virginia's Department of Corrections reached a settlement agreement that allowed Lee to transfer to another facility in New Jersey.<sup>99</sup>

Stories like Lee's are common. Unsurprisingly, there have been numerous efforts in law and academia that acknowledge the depreciating effects of solitary confinement and push for a ban on the practice for certain vulnerable groups.<sup>100</sup> For instance, Colorado outlawed solitary confinement for prisoners suffering from a mental illness.<sup>101</sup> Colorado justified this decision by concluding that once a mentally ill prisoner is placed in solitary confinement, their mental health "decompensates further, making them a great threat to their own safety as well as to the safety of other prisoners, prison staff, and ultimately the public."<sup>102</sup> Many advocacy groups such as the Southern Poverty Law Center and the ACLU have recommended a ban or restriction on solitary confinement for prisoners with a serious mental illness.<sup>103</sup>

---

*Mentally Ill US Prisoner Held in Solitary Lost Ability to Speak, Lawsuit Alleges*, THE GUARDIAN (Sept. 4, 2019), <https://www.theguardian.com/us-news/2019/sep/04/virginia-prisons-solitary-confinement-tyquine-lee>; *Lee v. Va. Dep't of Corr.*, No. 2:20cv00006, 2020 U.S. Dist. LEXIS 231921, at \*3 (W.D. Va. Sept. 25, 2020).

<sup>98</sup> Sainato, *supra* note 97; *Lee v. Va. Dep't of Corr.*, No. 3:19cv502, 2020 U.S. Dist. LEXIS 69560, at \*16-17 (E.D. Va. Apr. 20, 2020).

<sup>99</sup> Weil-Greenberg, *supra* note 97.

<sup>100</sup> Jeffrey Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY L. 104 (2010), <http://jaapl.org/content/jaapl/38/1/104.full.pdf>.

<sup>101</sup> The Associated Press, *Restrictions on Solitary Confinement Now Law*, THE DENVER POST (June 6, 2014), <https://www.denverpost.com/2014/06/06/restrictions-on-solitary-confinement-now-law/>.

<sup>102</sup> *Id.*

<sup>103</sup> *We Can Stop Solitary*, ACLU, <https://www.aclu.org/issues/prisoners-rights/solitary-confinement/we-can-stop-solitary>; *Solitary Confinement: Inhumane, Ineffective, and Wasteful*, SOUTHERN POVERTY LAW CENTER (Apr. 4, 2019), <https://www.splcenter.org/20190404/solitary-confinement-inhumane-ineffective-and-wasteful>.

In all of the vulnerable groups mentioned, research has concluded solitary confinement to be an improper practice for those who are juvenile, elderly, or suffering from a mental illness.<sup>104</sup> This form of punishment yields unfavorable outcomes in all these groups and there have been a variety of efforts to ban it completely. Similarly, pregnant women in solitary confinement are denied the health-related resources that are crucial to their basic well-being and should also be classified as a vulnerable group protected from solitary confinement.

**VI. If solitary confinement is banned, how can alternatives support pregnant inmates while preserving interests of public safety and order?**

This note argues for a prohibition on solitary confinement with respect to pregnant inmates but understands that the current state of California's carceral practices in this respect is retrograde to the laws and policies of other U.S. jurisdictions. By looking at the evidence-based experiences from alternative models used in other jurisdictions, California has a wide range of options to consider when formulating its own alternative plan.

**Proposal #1: Adopting specific restrictions on solitary confinement for pregnant women**

Georgia's House Bill 345, which became law in October 2019, can serve as a potential model for California.<sup>105</sup> In this bill, a pregnant woman or a woman in the immediate postpartum period shall not be placed solitary confinement or administrative segregation.<sup>106</sup> Instead, the language states that placement of a woman in a hospital room or a cell by herself will be permissible.<sup>107</sup> In regards to addressing the physical and mental health concerns, Georgia's law serves as an excellent example not only because prohibits solitary confinement for

---

<sup>104</sup> *Solitary Confinement (Isolation)*, NAT'L COMM'N ON CORR. HEALTH CARE, <https://www.ncchc.org/solitary-confinement>; Williams, *supra* note 14.

<sup>105</sup> H.B. 345, Gen. Assemb. (Ga. 2019), <http://www.legis.ga.gov/Legislation/20192020/187593.pdf>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

pregnant women, but it also because it proactively identifies both solitary confinement and administrative segregation as prohibitive practices.<sup>108</sup> This precludes Georgia prison officials from simply labeling the practices as whichever is not explicitly mentioned in the statute and thereby working around the prohibition. California legislators could learn a lesson from this example. Currently, the CDCR does not use the words “solitary confinement.”<sup>109</sup> Instead, the CDCR uses the term “administrative segregated housing,” which is synonymous to solitary confinement.<sup>110</sup> Essentially, California prison officials can and do engage in workarounds under current laws regarding solitary confinement. In order for California to make effective law, it should enact language similar to Georgia’s by including solitary confinement as equivalent to “administrative segregation” or “administrative segregated housing.” Likewise, California should use the language employed in the earlier version of AB 732, which prohibited solitary confinement, administrative segregation, “or any similar practice” for pregnant and postpartum women.<sup>111</sup>

Georgia’s position as a leader in the reproductive health of incarcerated women, however, does not mean its law is perfect. By still allowing placement of a pregnant woman in a cell by herself, the law still allows prisons to create, by choice or by inadvertence, a setting that resembles and has effects similar to traditional solitary confinement.

In Montana, prisons are only allowed to use restrictive housing for pregnant or postpartum inmates in “exigent circumstances.”<sup>112</sup> And in the event that there is an exigent circumstance, the placement cannot exceed 24 hours.<sup>113</sup> But because “exigent circumstances” are not clearly defined and are determined by the prison’s administrator, this law falls short of guaranteeing pregnant women adequate protection from solitary confinement.<sup>114</sup> Similar to California’s Code

---

<sup>108</sup> *Id.*

<sup>109</sup> CAL. DEP’T. OF CORR. AND REHAB., *supra* note 9.

<sup>110</sup> NAT’L INST. OF JUSTICE, *supra* note 3.

<sup>111</sup> A. B. 732, *supra* note 26.

<sup>112</sup> H.B. 763, 66th Leg. (Mont. 2019).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*



of Regulations, in situations where statutory language is vague, the prison officials are granted the discretion to fill in the blank and potentially make a decision that is harmful to pregnant inmates without repercussion.<sup>115</sup> In this respect, Montana is similar to California: decisions regarding the health and safety of pregnant women are made without ensuring public participation from the community. Additionally, there is also a risk that a prison official may exercise this discretion questionably and inappropriately place a pregnant woman into solitary confinement. Thus, these laws do not fully protect pregnant women from solitary confinement. Because of the significant harms posed by this practice, anything less than a total ban on solitary confinement will likely fall short of adequately protecting pregnant women in prison. Nevertheless, Georgia and Montana have taken the important first step that California needs to take in acknowledging and protecting pregnant women from solitary confinement despite the fact that the laws of those states are not likely to prevent all the problems that pregnant women in prisons are likely to face.

**Proposal #2: Adopting solitary confinement alternatives that have been used for general populations**

California can also follow the footsteps of several of its county jails. Although these local jails have enacted new policies for the general population, California could potentially adopt and extend these methods for its pregnant population. In Santa Clara and Contra Costa, county facilities have implemented an incentive-based policy to deter anti-social behavior.<sup>116</sup> For instance, an officer may offer a misbehaving prisoner extra food as motivation to improve their conduct.<sup>117</sup> In these locations, the culture is different. It is one where the first reaction of misconduct is not to immediately resort to punitive measures that use violence and fear to improve behavior. Instead,

---

<sup>115</sup> 15 CCR § 3335, *supra* note 2.

<sup>116</sup> The Associated Press, *California Jails Use Kinder Approach to Solitary Confinement*, NEWS TRIBUNE (Dec. 27, 2019), <https://www.newstribune.com/news/national/story/2019/dec/27/california-jails-use-kinder-approach-to-solitary-confinement/809838/>.

<sup>117</sup> *Id.*

these prison officers will find alternative methods that do not harm prisoners and promote an overall healthier and more positive environment. Additionally, Santa Clara and Contra Costa exercise policies where solitary confinement can only be used when situations specifically involve violent behavior.<sup>118</sup>

The county jails' concern with controlling violent behavior may be reasonable to a certain degree. However, the overwhelming recent research on the dangers of solitary confinement for the general population and especially the vulnerable population should indicate that jail facilities must focus their resources on creating less punitive alternatives that will not cause harmful effects similar to those caused or exacerbated by solitary confinement.

In the hearings of SB 124 to restrict solitary confinement in juvenile prisons, a primary concern opposing the bill contended that there are a myriad of issues and special situations where an officer must use solitary confinement to ensure the safety of all prisoners.<sup>119</sup> In the absence of solitary confinement, there is a worry that officials will not have access to all the necessary resources to maintain order.<sup>120</sup> While prisoner safety and maintaining order are valid concerns, those factors alone are not enough to outweigh the proven harmful effects that administrative segregation has on the general population and especially vulnerable populations. Furthermore, jurisdictions like California lack regulations that prevent prisons from the possibility of exercising their broad discretionary authority to abuse and inappropriately use solitary confinement as a form of punishment. In order to truly protect the prison population, states must move away from continuing the wide use of this harmful practice.

Even if there is a need to separate a prisoner, either to protect that prisoner or if they pose a threat to others, there are alternative methods that do not involve single-cell confinement. In North Dakota, reform efforts have focused on providing leisure activities such as art projects, movies, and workshops to manage trauma reactions.<sup>121</sup> For

---

<sup>118</sup> *Id.*

<sup>119</sup> S.B. 124, *supra* note 19; *SB 124 Bill Analysis Hearing*, ASSEMB. COMM. ON PUB. SAFETY 18 (June 30, 2015).

<sup>120</sup> ASSEMB. COMM. ON PUB. SAFETY, *supra* note 119.

<sup>121</sup> THE ASS'N OF STATE CORR. ADM'RS, WORKING TO LIMIT RESTRICTIVE HOUSING: EFFORTS IN FOUR JURISDICTIONS TO MAKE CHANGES 8 (The Liman Ctr. for Pub. Int.

vulnerable prisoners such as those who are mentally ill, Colorado has been able to successfully maintain safety by placing prisoners that pose a threat to others in alternative settings such as mental health units.<sup>122</sup> Through this policy, Colorado has demonstrated a way that illustrates how separation can be achieved without having to rely on single-cell confinement.

Another illustration of an effective alternative that California should strive to adopt can be found outside of the United States. As mentioned, the United Nations' Nelson Mandela Rules outlaw solitary confinement for children, women, and people suffering from disabilities.<sup>123</sup> One foreign jurisdiction that has made significant efforts to strive towards meeting the Nelson Mandela Rules' expectations is the United Kingdom.<sup>124</sup> Like the U.S., the U.K. also has its own problematic history of overusing solitary confinement.<sup>125</sup> But beginning in 1998, Britain created its Close Supervision Centers program.<sup>126</sup> Under this model, prisoners are separated and placed into small groups of less than 10. The thought process is that the prisoners will be separated from the general population that they are endangering, or are endangered by, but they do not have to endure completely isolated punishment. In addition, these centers are equipped with resources and activities such as a library, mental health treatment, and fitness equipment.<sup>127</sup>

Under their alternative model, British prisons have reallocated their resources in solitary confinement to the development of the Close Supervision Centers program and the facilities that are built inside them. Considering that solitary confinement costs an average of about \$75,000 a year per prisoner, it may also be of financial benefit for

---

L. at Yale L. Sch. Oct. 2018), [https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca\\_liman\\_2018\\_wor kingtolimit.pdf](https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_wor kingtolimit.pdf).

<sup>122</sup> *Id.*

<sup>123</sup> UNITED NATIONS, *supra* note 15.

<sup>124</sup> Katherine Lamb, *Beyond Solitary Confinement: Lessons From European Prison Reform*, BROWN POLITICAL REVIEW (Nov. 22, 2015), <https://brownpoliticalreview.org/2015/11/beyond-solitary-confinement-lessons-from-european-prison-reform/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

American jails and prisons, namely those in California, to adopt their own Close Supervision Centers program instead of continued use of solitary confinement.<sup>128</sup>

### **Proposal #3: Improving California prison data on pregnant inmates**

It is imperative that the legislature address the CDCR's current shortcomings in providing data of its pregnant inmate population to the public. Unfortunately, California is not an outlier in the U.S. in regards to unavailability of such data. State prisons have typically not been required to provide data on their pregnant population.<sup>129</sup> Since 2016, the Pregnancy in Prison Statistics Data (PIPS) project has combatted the lack of transparency from facilities all over the country by successfully gathering population data from just 22 state prison systems.<sup>130</sup> California declined and refused to fulfill the PIPS project's request.<sup>131</sup> Consequently, much research on pregnant prisoners is obligated to use data estimates. In the case of California and its 3,491 total female state prisoners in September 2020, the closest state that does provide data and shares similarities to California is Texas.<sup>132</sup> Because Texas has a law requiring its county facilities to provide data, we know that the pregnant population in Texas facilities makes up approximately five percent of the total population.<sup>133</sup> Accordingly, that implies the CDCR may have been responsible for approximately 175 pregnant prisoners as of September 2020.

California should adopt legislation similar to Texas's House Bill 1140 to require that CDCR monitor its prison population's

---

<sup>128</sup> Keramet Reiter, *The Social Cost of Solitary Confinement*, TIME (Oct. 21, 2016), <https://time.com/4540112/the-social-cost-of-solitary-confinement/>.

<sup>129</sup> PREGNANCY IN PRISON STATISTICS PROJECT, <https://pipsdata.org/>.

<sup>130</sup> *Id.*

<sup>131</sup> *Pregnant Behind Bars: What We Do and Don't Know About Pregnancy and Incarceration*, ENVISIONING JUSTICE, <https://envisioningjustice.org/2019/03/30/pregnant-behind-bars-what-we-do-and-dont-know-about-pregnancy-and-incarceration/>.

<sup>132</sup> CAL. DEP'T. OF CORR. AND REHAB., *supra* note 34; *Pregnant Women in Texas County Jails*, TEXAS JAIL PROJECT, <https://www.texasjailproject.org/pregnancy-in-jails/>.

<sup>133</sup> *Pregnant Women in Texas County Jails*, *supra* note 132.

pregnant inmates and detail how they are treated within the state prison system.<sup>134</sup> Texas's bill, passed in 2015, requires county jails to provide a detailed report to the Commission on Jail Standards assuring that every pregnant women held is receiving adequate medical attention.<sup>135</sup> These details include information such as the type of healthcare provided, medical appointments taken, inmates' average caloric intake, and a separate category for the total number of miscarriages.<sup>136</sup> Of particular interest, Section 2(b)(1) specifically mentions that the sheriff must provide a report anytime they adopt a policy regarding the placement of a pregnant prisoner in solitary confinement.<sup>137</sup> Although Texas is not one of the most progressive states in terms of banning solitary confinement of pregnant women, its past legislation on data collection is a huge step forward in terms of enabling more adequate protection to this vulnerable prison population. This legislation has meaningfully assisted advocacy groups and researchers like the PIPS project and Texas Jail Project in mobilizing and developing non-governmental and non-profit prison reform strategies.

## **VII. Conclusion and concerns if California limits solitary confinement**

During AB 732's progress, the concerns about the language banning solitary confinement proved to be too expansive for the clause to survive to the final version of the bill. One of the primary concerns stemmed from the feasibility issues of the CDCR to ensure prisoner safety, especially if the pregnant woman is the one that is endangering others.<sup>138</sup> Similar to discussions during the hearings of SB 124 (restricting solitary confinement in juvenile prisons), the opposition to the bill argued that many circumstances will arise in which separation is necessary to guarantee prisoners' safety.<sup>139</sup> The opposition to SB 124 consisted of 14 parties that were all either probation offices or

---

<sup>134</sup> H.B. 1140, 84th Leg. (Tex. 2016).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 2(b)(1).

<sup>138</sup> Video Interview, *supra* note 31.

<sup>139</sup> ASSEMB. COMM. ON PUB. SAFETY, *supra* note 119.

some other type of law enforcement.<sup>140</sup> While concerns about maintaining safety certainly have merit, the goal of this note is to illustrate that no matter the circumstance, solitary confinement cannot be the answer. Solitary confinement has been the traditional way that prisons have usually dealt with situations where a prisoner is uncooperative or is in danger from others. However, the consequences and damages that this practice has been proven to generate, particularly for pregnant women, should be sufficient grounds for finally prohibiting or restricting this harmful practice. In addition to highlighting the major negative effects of solitary confinement upon pregnant women, this note also sought to provide alternative models and show that there are other jurisdictions whose lead California can follow in recognizing and prioritizing the needs of a marginalized population.

As previously articulated, solitary confinement is a practice proven to cause immense psychological damage and increases the rate of suicide to all people subjected to it. For that reason, another concern about AB 732's initial language of banning solitary confinement for pregnant women was that this bill may imply solitary confinement as an acceptable use for the general population. By specifically prioritizing and relieving one group and not all groups, the language of AB 732 caused concern that this bill may become an obstacle for those with ambitions of eventually banning solitary confinement completely. Although this concern is reasonable, especially from a political perspective, it is counterproductive to allow an especially vulnerable group to continue suffering simply because the monumental overarching law that abolishes the entire practice has not come to fruition yet. Moreover, there has already been regulation towards restricting solitary confinement for another specific vulnerable population: juvenile prisoners.<sup>141</sup> Although SB 124 only protects young people from solitary confinement, the protections guaranteed to this specific population have not been prominently cited as a reason to support the continuation of the practice for the general population.<sup>142</sup> In both the juvenile and pregnant prison population,

---

<sup>140</sup> *Id.*

<sup>141</sup> S.B. 124, *supra* note 19.

<sup>142</sup> *Id.*

---

---

they are both vulnerable populations and there should be an increased urgency to protect them from an impractical form of punishment.

Public defenders and social justice lawyers who strive to create major reforms in the justice system will still continue working within the system they intend to change. But, until that day of major reforms comes, many will still navigate through the imperfect system because their clients currently require help. Food banks and community NGOs will usually aim for broader goals such as ending poverty, hunger, class oppression, environmental inequity, and racism. However, in the current reality of the world, helping those that are in immediate need takes priority. Obstetrician/Gynecologist and medical anthropologist Carolyn Sufrin has goals to fundamentally and drastically change the current incarceration system, yet she also recognizes people are suffering so she still dedicates her work towards supporting and uplifting women who are currently incarcerated in the meantime.<sup>143</sup>

In no way does the oppression of pregnant women diminish the concerns of the general population. As research has called for, solitary confinement should be banned completely. But other than SB 124 in 2015, California has not effectuated much action towards acknowledging the harms of this practice. This state's historical unwillingness to recognize solitary confinement as a punitive, harmful, and unproductive practice should not serve as a deterrent in passing legislation now. California should expand the rationale of SB 124 and extend the end of solitary confinement to other vulnerable populations. As more laws go into effect, California will slowly chip away at restricting this practice until it is one day eliminated. Until then, California must first protect those who currently face the greatest peril. In the case of pregnant women subjected to solitary confinement, an especially vulnerable population has and will almost certainly continue suffering irreparable harm if no action takes place soon.

---

<sup>143</sup> Sufrin, *supra* note 56.